

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

October 12, 2005

IN RE:

PETITION OF EUREKA BROADBAND CORPORATION
AND A.R.C. NETWORKS, INC. FOR AUTHORITY TO
TRANSFER CONTROL OF AN AUTHORIZED CARRIER

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DOCKET NO.
05-00160

ORDER APPROVING TRANSFER

This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on August 8, 2005 for consideration of the *Petition* filed by Eureka Broadband Corporation, d/b/a Eureka Networks ("Eureka") and A.R.C. Networks, Inc. ("A.R.C." and collectively with Eureka, "Petitioners") requesting TRA approval of a transfer of control from A.R.C. to Eureka.

The Petition

Eureka is a privately held Delaware corporation that does business under the d/b/a Eureka Networks. Eureka, through its operating subsidiaries, provides a variety of regulated and unregulated services including facilities-based Internet services, high-speed Internet access and Internet protocol based application services to business customers with bandwidth-intensive needs and local and long distance voice products.

A R C is a wholly owned subsidiary of InfoHighway Communications Corporation ("InfoHighway") and provides local and long distance telephone services. A R.C. is authorized to provide interexchange telecommunications services in the State of Tennessee by Order dated

December 2, 2002 in TRA Docket No. 02-01168. InfoHighway is a Delaware corporation providing integrated communications solutions.

On June 9, 2005, the Petitioners filed the *Petition* seeking Authority approval of a transfer through which InfoHighway will become an indirect, wholly owned subsidiary of Eureka. Eureka has created a new, wholly owned subsidiary, IH Acquisition Corp., which will merge with and into InfoHighway. As a result, InfoHighway and A.R.C. will become wholly owned indirect subsidiaries of Eureka.

According to the Petitioners, the proposed transaction will not change the services provided to A.R.C.'s customers. The *Petition* states that A.R.C. will continue to provide services under the same rates, terms and conditions. Thus, the Petitioners maintain that the proposed transaction will be transparent to A.R.C.'s Tennessee customers. Additionally, the Petitioners assert that the proposed transaction will serve the public interest by promoting competition among telecommunications providers in Tennessee. The Petitioners also maintain that the proposed transaction will enhance the ability of the entities to expand their respective operations both in terms of service, area coverage and the ability of each entity to offer customers an expanded line of products and services.¹ The *Petition* states that A.R.C. will benefit from the highly qualified and experienced management and financial resources provided by Eureka.²

August 8, 2005 Authority Conference

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience

¹ *Petition*, p. 7 (June 9, 2005)

² *Id.* at 2

and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority

Tenn. Code Ann § 65-4-113(b) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on August 8, 2005, the voting panel assigned to this Docket found that, after reviewing the relevant factors listed in Tenn. Code Ann. § 65-4-113 (2004) and based on the *Petition* and the Company's responses to the Data Requests, the transfer furthers the public interest. Thereafter, the panel voted unanimously to grant approval of the *Petition*.

IT IS THEREFORE ORDERED THAT:

The proposed transfer as described in the *Petition* and discussed herein is approved.



Ron Jones, Chairman



Deborah Taylor Tate, Director



Pat Miller, Director